

IT'S TIME TO REFORM WASHINGTON'S HARMFUL SYSTEM OF FINES AND FEES

Getting rid of legal financial obligations would bring economic support to thousands of Washingtonians

Overview

People in Washington deserve a criminal legal system that promotes healing and justice. This type of system would ensure victims are made whole while also giving people convicted of criminal offenses an opportunity for repair and restoration without being trapped in a downward and never-ending spiral of debt and poverty. However, this type of system, which would advance justice and equity, is greatly undermined by a vast array of harmful and counter-productive fines and fees (also called legal financial obligations or LFOs) levied upon people throughout their interaction with the criminal legal system. The short- and long-term harm caused or exacerbated by these fines and fees are disproportionately shouldered by Black, Indigenous, or People of Color (BIPOC), people who have low or moderate incomes, and people with disabilities. Enacting new equitable sources of funding for courts, eliminating all court and service fee LFOs, canceling outstanding debt tied to LFOs, and implementing the other reforms highlighted in this brief would promote justice and economic security by alleviating extreme financial hardship among thousands of struggling Washingtonians and their families and communities.

LFOs are fines and fees that include charges for DNA collection, access to public defender services, jail bookings, and many other costs.¹ Each year, about 70% of residents who receive court-mandated fines or fees cannot afford to pay them, pushing many into debt and financial instability.² In fact, a person's debt from LFOs can easily add up to thousands of dollars and create devastating financial pressures for them and their families. For residents caught in the legal system, these costs can create or deepen other traumas, such as health issues or homelessness.³ Too often, the impact of LFO debt ultimately harms the children and loved ones of those convicted.⁴ These monetary sanctions can easily become an additional sentence that looms over a person's life – and their family's life – well beyond their time incarcerated.

LFOs also harm Washington communities by exacerbating class exploitation, racism, and ableism through extracting resources from those who are often least able to pay. As a result, LFOs create an inequitable, inadequate, and unreliable source of

DEFINING LEGAL FINANCIAL OBLIGATIONS

Legal Financial Obligations (LFOs): The sum of fines, fees, restitution, and other court costs that a person is sentenced in the legal system. Throughout this brief, the terms fines and fees and monetary sanctions are used interchangeably with LFOs.

Fines: Monetary amounts people have to pay based on a criminal charge which are punitive in nature.

Fees: Monetary amounts people have to pay while interacting with court and legal services throughout the criminal legal system. In Washington, for example, there are fees associated with DNA testing, jury trials, and use of public defenders. Fees are charged to recoup the costs of court and government services.

Restitution: A monetary amount that a person has to pay specifically for damages caused to another person or entity (such as an insurance company or state agency). This monetary sanction can occur in addition to the fines and fees.

Mandatory Fines and Fees: Unlike discretionary fees that can be waived for an inability to pay or certain mental health conditions, there are a few fees that are currently mandatory in sentences:

- ▶ The Victim Penalty Assessment fine is \$250 per misdemeanor conviction and \$500 per felony conviction and
- ▶ The DNA collection fee is \$100 for the first time a person provides a sample.⁷

Note about the term “crime”: It is important to acknowledge that the very concept of crime in the United States is a fraught term. Those with political power label and codify certain behavior as criminal, guided by dominant cultural, racial, and economic structures which often criminalize and punish behavior of those outside of the white middle and upper classes, such as people of color, people with disabilities, and people experiencing poverty or homelessness.⁸ This brief uses the word crime to describe the offense of which a person is convicted.

funding for community priorities. In fact, many county and municipal courts in Washington have become too reliant on LFOs as a source of funding for daily court operations – activities that should be supported by broad, equitable, and dependable sources of revenue. In part, this is because the state government provides so few resources to local courts in Washington state.⁵ As of 2015, Washington ranked last in the nation in state funding for trial courts.⁶ Without adequate funding from the state government, many local courts – especially those in economically distressed areas with limited tax resources – must continuously ratchet up harmful LFOs to maintain court operations.

Fortunately, LFO reforms – many being considered in Washington or implemented in other states – would help mitigate and repair the harms caused by our state’s inequitable network of fines and fees. These include:

- ▶ **Eliminating all court and service fee LFOs**
- ▶ **Enhancing economic security by canceling debt tied to unpaid fines and fees and prohibiting predatory debt collection practices**
- ▶ **Restructuring fines to protect residents from a toxic cycle of debt and poverty**
- ▶ **Enacting new, equitable sources of state revenue to adequately fund courts and reduce harm to residents**

There is already momentum underway in Washington state for policy reforms that could bring greater justice to Washingtonians ensnared in fines and fees from the criminal legal system. Legal advocates, community activists, currently and formerly incarcerated people, and researchers and scholars throughout the state lead public education and reform efforts. House Bill 1412 and Senate Bill 5486, which seek to reduce LFOs and other LFO-related burdens for people with limited or no incomes, are now under consideration in the state legislature. In addition, an important legal challenge currently under review in Pierce County court, *Lemmon v. Pierce County*, could compel lawmakers to make amendments to laws guiding Washington’s unjust LFO system. Meanwhile, in California, lawmakers recently abolished many administrative court fees and took other actions to ensure remaining fees will be applied more equitably. These LFO reforms should serve as a model for Washington state.

Assigning LFOs as punishment has grown dramatically

In line with national trends, Washington state has significantly expanded its criminal legal systems over the past 50 years. This includes criminal courts, police, jails, prisons, and detention centers. Before the middle of the 20th century, the approach to sentencing in the United States emphasized rehabilitation. Under that system, judges were given significant flexibility to tailor sentences and punishments according to the individual circumstances surrounding each crime and those involved. Starting in the 1970s, lawmakers altered the legal system to emphasize punishment in sentencing instead of rehabilitation.⁹ And judges were granted less flexibility in their approaches to sentencing in the decades that followed.¹⁰ Fines and fees were not widely used as a punishment in the United States until the 1980s.¹¹ Before then, this form of punishment was not viewed as an effective deterrent to crime.¹²

Two large policy changes led to the expanded use of fines and fees as a form of punishment and as a new source of revenue for courts, policing, and other public priorities. The first was the Nixon administration's so-called "War on Drugs", which caused BIPOC – particularly Black people – to be policed and jailed at disproportionately higher rates. The resulting influx of people into the legal system placed significant pressure on local, county, and state governments to increase public funding for courts and prisons.¹³

The second large policy change during this time was state and local governments slashing taxes on wealthy residents and large corporations, leaving fewer resources available to fund public priorities.¹⁴ With expanding legal, prison, and policing systems requiring greater government revenue, policymakers levied greater fines and fees on people in the criminal legal system, who have limited political and economic power, rather than raising taxes on high-income households and profitable corporations.¹⁵

As a result, there has been an increased reliance on fines and fees since the 1980s, which are disproportionately extracted from people with limited or no incomes and has created what many have called "new debtors' prisons."¹⁶ This practice has come under scrutiny of the courts as a federal constitutional violation of the Eighth and Fourteenth Amendments, which provide protection from excessive fines and a right to due process and equal protection,¹⁷

respectively. The number of Washington residents owing fines and fees grew rapidly following passage of multiple sentencing acts in the 1980s. "Legal financial obligations" were defined and added to the Revised Code of Washington in 1989 to more clearly organize who administered LFOs and where revenue collected from them would go.¹⁷ Over time, these changes have given more authority over LFO collections to county clerks as well as private collection agencies.¹⁸

Ultimately, this sprawling apparatus of monetary sanctions heavily contributes to the tens of millions of people that are indebted in the U.S. today.¹⁹

Washington's system of fines and fees is opaque and inequitable

The maze of LFOs levied in Washington state is opaque, complex, and difficult for residents to comply with. Today, county and municipal courts may impose more than 100 different fines and fees on residents who interact with the criminal legal system.²⁰ Common fines and fees currently assessed by courts in Washington state include the mandatory Victim Penalty Assessment (VPA), criminal conviction fees, and pre-trial supervision fees (see sidebar for details on common fees and fees and definitions).

In fact, many Washington residents have cited confusion about the process and uncertainty about follow-up with courts as a major reason for nonpayment of court-mandated fines.²¹ Some people do not even know how much they owe and who they have to pay after their court hearing.²² Further, Washington's non-unified court system, in which courts are administered locally, can complicate LFO management and payment – particularly for people who owe monetary sanctions in different jurisdictions.²³

In total, fines and fees generated about \$270 million in public revenues across Washington state, counties, and municipalities in 2018.²⁴ Just as narrow taxes on cigarettes, liquor, or toxic chemicals are used to mitigate the specific harms associated with their use or consumption, LFO revenues should be used to address the harms or dangers to public safety for which they are purported to be levied. Unfortunately, the majority of LFO revenues go to local, county, and state general funds instead of being dedicated to reducing specific public harms or restitution.²⁵



Money collected from LFOs is dispersed between local, county, and state general funds and other crime- or victim-specific funds. Courts with less capacity to pursue LFO collections contract with private, for-profit collections agencies to fulfill the court's needs.²⁶ In these cases, collections agencies extract even more money from struggling people and communities by adding arbitrary fees and charging exorbitant rates on top of LFO debt – as much as 50% (or 35% if the debt is greater than \$100,000) of the total outstanding debt.²⁷ The huge profits that collections agencies reap from this LFO debt accrues regardless of peoples' ability to pay. And since people would be able to pay off LFO debts much faster without compounded effects of 12% interest per year and the excessive fees and charges added by collections agencies, these fees serve only to deepen and prolong their indebtedness.²⁸

LFOs exacerbate class exploitation, racism, and ableism in our state's legal system

Fines and fees take an extremely heavy toll on Washingtonians with the lowest incomes. The vast majority of residents that are assessed LFOs as a part of their sentence have little or no incomes.²⁹ And neighborhoods with higher rates of poverty also have significantly higher LFO debt per person.³⁰ As a result, about 90% of felony defendants and 60% of misdemeanor defendants cannot pay the mandatory

fines and fees assessed at sentencing.³¹ The average amount of VPA fines owed in Washington state is \$854.³² For felony convictions, the average amount owed in fines and fees is about \$2,500.³³ This is a devastating amount of debt for people experiencing poverty and is exacerbated for those that receive multiple convictions.

Due to ongoing institutional racism in policing practices, BIPOC are also disproportionately harmed by LFOs in Washington state. Law enforcement is more likely to stop and give a ticket to Washingtonians of color.³⁴ As a result of these increased interactions, Washington state's BIPOC communities are also more likely to become ensnared in the criminal legal system and receive a monetary sanction. Fines and fees levied on residents of color during sentencing are also more costly than the same charges are for white residents.³⁵

The cost of the whole criminal legal process is a form of income and resource extraction,³⁶ in which time, resources, and money from both people convicted of offenses and their loved ones and families are paid to the criminal legal system, with women of color especially burdened.³⁷ These monetary sanctions add to historical and persistent policies – such as redlining and predatory lending – that keep BIPOC from secure access to wealth and financial stability. Past and present sexism and racism in the employment, housing, policing, and financial systems explain why Black and Latinx people with LFO debt are more likely to maintain that debt for a longer period than white people.³⁸

In addition, bench warrants, or orders from a court to arrest a resident for unpaid LFOs, can lead to life-threatening interactions between residents and police and can be especially dangerous to BIPOC. When police officers scan a person's license plate and see a bench warrant, this gives them an excuse to pull the person over. Too often, police respond with violence during these encounters. BIPOC are frequently pulled over for pretext traffic stops and too many have been killed or egregiously wounded in stops stemming from bench warrants.³⁹ Bench warrants and this practice of pretext traffic stops for unpaid LFOs in particular has led to multiple deaths of Black people, including Daunte Wright in Minneapolis, Minnesota.⁴⁰

Washingtonians with disabilities also experience disproportionate harm from the state's system of fines and fees. Under Washington law, people with disabilities are not exempted from mandatory fine and fee assessment (such as the VPA).⁴¹ Notably, people with a limited Social Security Disability Income (SSDI) have no protection from becoming saddled with debt from LFOs despite their limited income. Although court rulings prohibit the court from requiring SSDI to be used to pay for LFOs, people with disabilities can be put in a position to use their SSDI to make LFO payments, even if doing so prevents them from paying for rent and meeting other basic needs.⁴² People with disabilities who are arrested because of their unpaid LFOs or failure to appear in court are also more likely to experience life-threatening circumstances if they are sent to prison.⁴³ Imposing large fines and fees on people with disabilities – who often have extremely limited incomes and endure multiple, overlapping forms of oppression – is a highly unethical way to fund courts and other public investments.

LFOs are an inequitable and unreliable way to fund community priorities

Fines and fees compound the inequities created by Washington state's upside-down state and local tax code. Washingtonians with lower incomes already pay up to six times more of their incomes in state and local taxes than the wealthiest residents.⁴⁴ And since people with LFO debt in Washington are more likely to have limited or no incomes, LFOs act as yet another inequitable tax on struggling communities.⁴⁵

Counties and municipalities that have a greater reliance upon fines and fees also have greater incentives to assess monetary sanctions at even higher

rates. Due to the discretion that judges and county jurisdictions have in assessing LFOs in Washington, the amount that courts can assess per criminal charge can vary depending by jurisdiction.⁴⁶ This means that the same criminal charge can have vastly different fee amounts, depending on the county.

In jurisdictions with smaller populations, the state's inadequate funding model places more Washingtonians at the whims of municipal and county budgets, thereby creating an incentive to charge larger LFOs. This lack of sufficient funding – and the reliance on fines and fees – lessens the quality of court and legal services, limits accountability for victims, and prevents rehabilitation for those charged.

LFO debt harms residents and should not fund public priorities

Debt tied to unpaid LFOs decreases many residents' economic and legal security and negatively affects their well-being. Many courts in Washington do not have the capacity to follow up on people's LFO accounts, so counties contract those cases with collections agencies. Like other types of debt, court debt can lead to or worsen poverty and Washingtonians already struggling to make ends meet can be forced to choose between meeting their basic needs and paying down debt from outstanding LFOs.⁴⁷

If left unpaid, LFOs can create or worsen economic insecurity in many ways. Unpaid monetary sanctions negatively affect credit scores, the ability to get housing and employment, the ability to attain loans, and more.⁴⁸ Garnishment of wages, tax credits, and other income for people with unpaid LFOs can also occur, with added garnishment costs to debtors, and leave Washingtonians and their loved ones unable to cover the basics.⁴⁹

Furthermore, unpaid fines and fees create unsustainable revenue sources for counties and municipalities with millions of dollars in LFOs going uncollected each year. Unpaid LFOs in Washington state currently amounts to at least \$2.5 billion.⁵⁰ The revenues collected from criminal legal fines and fees amount to just 0.68 percent of the total budget in the typical Washington state jurisdiction.⁵¹ Meanwhile, that limited revenue comes at a devastating cost to the well-being of communities across Washington. Recent and current lawsuits against city and county governments in Washington argue that the state's LFO laws violate federal and state constitutional

protections against excessive fines, since they don't adequately take into account residents' capacity to pay.⁵²

LFO reforms will promote justice

The following reforms to Washington's LFO system – some of which are included in HB 1412 and SB 5486 and in California's recent reforms – would start to bring financial relief and opportunity to thousands of struggling residents and create a more equitable and adequate court system for everyone. Reforms that reduce harm to residents will also reduce crime and ease the strain on Washington's courts. Future LFO reforms and legislative changes should also center the needs of and give political decision-making power to people most impacted by the fines and fees system.

1. Eliminate all court and service fee LFOs.

Without adequate funding from the state, local courts face a perverse incentive to continually increase fines and fees levied on people convicted of offenses simply to generate the revenue needed to maintain funding for daily operations. To eliminate this problematic incentive, lawmakers should eliminate court and service fees and prohibit other LFO revenues from being used to fund court-related salaries and other court or legal operations. Relatedly, revenues from non-administrative court and service fees, such as those collected from speeding tickets and other traffic violations, should be used to address the specific public harms that they are meant to deter. For example, revenues could be used to increase public transportation access, build safer infrastructure for pedestrians and drivers, and implement additional traffic safety measures.

2. Enhance economic security by canceling debt tied to unpaid fines and fees and prohibiting predatory debt collection practices.

Keeping people trapped in court debt exacerbates economic insecurity and exploitation from court surveillance. Private, for-profit debt-collection companies hired to collect LFO debt, can make matters worse by charging excessive interest rates and added fees. There are multiple routes for debt to be cancelled: through post-conviction debt waivers, amnesty days to forgive debt and expunge criminal records, and other legislation that eliminates unpaid fines and fees as court debt. Legislation that also removes private debt-

collectors from the LFO system would greatly alleviate the disproportionate economic toll and cascading harms borne by Washingtonians who are already struggling to make ends meet.

3. Restructure fines to prevent the cycle of debt and poverty.

After all court and services fees have been eliminated, all remaining fines should be restructured to account for a resident's ability to pay as measured by their income and the severity of the crime they're convicted of. Often referred to as a "day fines system," in which fines increase based on a resident's daily income, this strategy promotes accountability without unduly punishing those who have limited incomes.

4. Enact new, equitable sources of state revenue to adequately fund courts and reduce harm to residents.

To adequately fund a court system that Washingtonians deserve – one that delivers justice efficiently while promoting racial equity and community healing – policymakers must rely on broader, more equitable, and more reliable sources of revenue. Most funding for the state and local court system should come from the state budget to ensure all residents, communities, and businesses benefit equally. In economically distressed regions of Washington, some local governments cannot adequately support their courts without necessary resources provided by the state. Adequate funding from the state would alleviate both pressures on the courts to charge larger LFOs in distressed regions and appropriately resource the courts to better meet community needs and improve justice.

The harm done to struggling residents and communities by LFOs is severe compared to the relatively small amount of revenue they generate. In total, fines and fees at all levels of government in Washington state amount to less than one percent of the annual state operating budget (about \$270 million per year), according to a recent analysis from the Vera Institute of Justice.⁵³ Not all of this revenue needs to be replaced since certain fines, such as those levied for Driving Under the Influence (DUI) and other forms of dangerous driving, are necessary to protect public safety. Lawmakers should increase state funding for courts by about \$300 million per year to ensure they are adequately funded without harmful LFO revenues.

To maintain ample budget reserves and ensure a reliable, long-term source of state funding for court operations, lawmakers should consider enacting equitable revenue streams to replace LFOs. Options for doing so include:

► **Enacting new payroll taxes on salaries paid to CEOs and other highly paid corporate employees:**

Lawmakers in Washington state could quickly and equitably raise the revenue needed to fund court operations in the coming years by enacting a new, progressively structured payroll tax on the state's highest paid employees. The City of Seattle recently enacted such a tax, which is expected to generate over \$200 million per year for affordable housing, supports for small businesses, and other investments that will help the city recover from the COVID-19 pandemic. A statewide 1.2% tax on payroll from corporate employees earning over \$150,000 per year would generate over \$300 million per year in new revenue, more than enough revenue to replace all funds from LFOs.⁵⁴

► **Increasing the estate tax and extend it to multimillion-dollar inheritances:** Washington administers an estate tax on the privilege to transfer property at the time of death. In fact, Washington has one of the strongest estate taxes in the nation. This tax is one of the few progressive features of the state tax code because it affects only the most well-off households who pass on

“

Future LFO reforms and legislative changes should center the needs of and give political decision-making power to people most impacted by the fines and fees system.

”

substantial wealth to their heirs. To generate the revenues needed to offset LFOs, lawmakers could increase the top rate on the estate tax or impose a new rate on the most valuable estates. They could also impose a new tax on wealthy Washingtonians who receive large inheritances from nonresident relatives. These individuals are not currently subject to the state's estate tax.

► **Raising excise taxes on high-value real estate transactions:** Like virtually all other forms of wealth, real estate assets are predominantly concentrated among wealthy, white households. Washington's Real Estate Excise Tax (REET) is a one-time tax imposed when a piece of real estate is sold, with variable rates depending on the value of the property. To raise additional



revenue, the legislature can create higher rates for properties valued at more than \$1.5 million. Doubling the tax rates applied to real estate transaction over \$1.5 million would generate about \$350 million in new revenue per year – more than enough to replace LFO revenues.

► **Eliminating harmful property tax restrictions:**

Since 2001, state investments in K-12 schools, along with an array of investments supported by local governments (including courts), have been hamstrung by a damaging law that limits growth in property tax collections to just one percent per year. Because costs associated with housing, fuel, health care, and other basic needs typically grow faster than one percent each year, the property tax is no longer an adequate source of revenue for funding public priorities. Reforming the law to allow these property tax levies to grow with the annual rate of inflation plus the rate of population growth, would increase local resources by over \$300 million per year in the coming years.⁵⁵

Actions to reform LFOs are underway

Legislation that would begin to implement some of these important reforms is now under consideration in the Washington state legislature. In 2021, a court ruled that the Washington statute that suspended driver's licenses to push people to pay non-criminal traffic tickets was unconstitutional. Additionally, a class action lawsuit filed in Pierce County could compel Washington state lawmakers to amend LFO laws, particularly ones related to collections agencies and the rates they can charge on outstanding debt. And the state of California recently enacted equitable and reparative LFO reforms that should serve as an example of the work Washington state lawmakers can accomplish in the coming years.

House Bill 1412 and Senate Bill 5486: Current bills in the Washington legislature are built upon the work and efforts toward LFO relief that advocates and impacted communities fought for in 2018 with the passage of House Bill 1783. HB 1783 started crucial reforms by eliminating 12% annual interest for non-restitution LFOs (retroactively), expanding indigency determination, eliminating the mandatory DNA fee after the first conviction, and providing community service as an alternative to monetary payment, amongst other relief.⁵⁶ Introduced in both

chambers in the 2021 legislative session, HB 1412 and SB 5486 would build on these reforms by:

- Giving sentencing courts the discretion to waive the mandatory Victim Penalty Assessment and any fines imposed post-sentencing based on a person's ability to pay;
- Giving courts discretion at sentencing to waive interest on restitution for people with limited or no ability to pay;
- Placing a limit on the court's lifelong ability to collect LFOs; and
- Giving greater discretion to judges to consider a defendant's ability to pay in other circumstances.⁵⁷

These reforms are important additions to LFO reform. However, since research demonstrates that defendants experience racial bias at sentencing, these bills would be strengthened by removing discretion and placing full elimination of mandatory VPA for people with limited or no ability to pay.⁵⁸

Pierce et al. v. DOL (2020): Washington state law that suspends driver's licenses for failure to pay a traffic ticket or appear in court at a required time in order to coerce payment were found unconstitutional in May 2021.⁵⁹ Thurston County Superior Court ordered the reinstatement of licenses that had been suspended for unpaid non-criminal traffic citations and a prohibition on license suspensions when a person doesn't pay or appear at their court date.⁶⁰ This court order lasts until new legislation regarding driver's license suspension for unpaid fines goes into effect in January 2023.⁶¹ This court order is crucial in alleviating the detrimental impacts that driver's licenses suspension of non-criminal traffic fines brought upon tens of thousands of Washingtonians.

Lemmon v. Pierce County (2021): Currently in the US District Court of the Western District of Washington, this class-action lawsuit against Pierce County claims that Pierce County has violated the plaintiffs' Eighth and 14th Amendment rights by referring court debt to collection agencies. They argue that doing so excessively punished people with "additional charges despite their inability to pay [without due process and equal protection]."⁶² The plaintiff's court debt increased from \$800 at sentencing to \$2,000, despite not having the ability to pay.⁶³ The decision of this case could protect people with limited or no ability to pay from becoming trapped by excessive fines and fees.

California's 2020 LFO Reforms: California is setting an important precedent for all other states on LFO reform. In the 2020 legislative session, California passed a bill that eliminated 23 court related fees.⁶⁴ This new law led to the cancellation of \$16 billion in unpaid court related fees this year.⁶⁵ Lawmakers in California also eliminated 17 administrative court fees in 2021.⁶⁶ Ending these fees will bring immediate economic relief to thousands of California struggling to escape court-imposed debts. Doing so will also prevent future Californians from falling into harmful debt, bringing the state closer to economic, racial, and legal justice.

Conclusion

To bring greater legal, economic, and racial justice to Washingtonians, the state's system of monetary sanctions must end. Lawmakers should continue working to repair Washington state's unjust tax code and exploitative fines and fees, which disproportionately harm thousands of Washingtonians with limited or no incomes, people of color, and people with disabilities. Enacting new broad and equitable sources of state funding for municipal and county courts would allow lawmakers to eliminate the current, regressive system of LFOs. Doing so would also increase accountability, improve rehabilitation, and improve equity for Washingtonians. State lawmakers must build on the reforms of HB 1783 in 2018 by strengthening and supporting HB 1412 and SB 5486 to remove current policies and practices that disproportionately punish and criminalize Washingtonians who already face the greatest barriers to economic stability and progress.



Endnotes

- 1 Harris, A. (2016). A Pound of Flesh: Monetary Sanctions as Punishment for the Poor. Russell Sage Foundation, Table 4.1, pgs. 77-80.
- 2 Ishisaka, N. (2021, March 8). New Bill could provide help for Washington residents struggling with legal debt. The Seattle Times. <https://www.seattletimes.com/seattle-news/insurmountable-legal-debt-should-not-make-you-irredeemable/>.
- 3 Harris, A Pound of Flesh, 52-53.
- 4 Nagrecha, M., Katzenstein, M. F., Davis, E. (2013, January 6). First Person Accounts of Criminal Justice Debt When all else fails, fining the family. Center for Community Alternatives. <https://www.communityalternatives.org/wp-content/uploads/2019/11/fining-the-family.pdf>.
- 5 Doyle, T. (2015). Legal Financial Obligations: A Ball and Chain. Minority and Justice Commission Annual Report. Pg. 8. <https://www.courts.wa.gov/committee/pdf/2015MJCAnnualReport.pdf>.
- 6 Ibid.
- 7 Rafael, M. (2021, June). The High Price of Using Justice Fines and Fees to Fund Government in Washington State. Vera Institute of Justice. <https://www.vera.org/downloads/publications/the-high-price-of-using-justice-fines-and-fees-washington.pdf>.
- 8 Karakatsanis, A. (2019, March 28). The Punishment Bureaucracy: How to Think About “Criminal Justice Reform”. The Yale Law Journal Forum. pgs. 853-857. https://www.yalelawjournal.org/pdf/Karakatsanis_msbotakz.pdf.
- 9 Harris, A Pound of Flesh, 75.
- 10 Ibid.
- 11 Atkinson, T. (2016). A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors’ Prisons. Harvard Civil Rights-Civil Liberties Law Review Vol. 51, Rev. 189, pg. 190, 193. https://harvardcrcl.org/wp-content/uploads/sites/10/2009/06/HLC102_crop.pdf.
- 12 Ibid, 193.
- 13 Ibid, 194.
- 14 Page, J., & Soss, J. (2017). Criminal Justice Predation and Neoliberal Governance, Chapter 8 of Rethinking Neoliberalism: Resisting the Disciplinary Regime. Routledge. pg. 151. <http://urban.hunter.cuny.edu/~schram/neoliberalproofuncorrected.pdf>.
- 15 Atkinson, A Fine Scheme, 194.
- 16 Sperling, G. (2021, February 16). The New Debt Prison. The New York Times: Opinion. <https://www.nytimes.com/2021/02/16/opinion/politics/debt-america.html>.
- 17 Revised Code of Washington section 9.94A.760 (1989 c 252 section 2) <https://apps.leg.wa.gov/rcw/default.aspx?cite=9.94A.760>.
- 18 Harris, A Pound of Flesh, 95.; Revised Code of Washington Section 19.16.500 also states that court clerks are allowed to “transfer a non-incarcerated debtor’s LFO obligations” to the county’s debt collection [agency(ies)] from Adamson, B. (2020). Debt Bondage: How Private Collection Agencies Keep the Formerly Incarcerated Tethered to the Criminal Justice System, Northwestern Journal of Law and Policy 15th Edition, pg. 307. <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1201&context=njls>.
- 19 Estimated national debt owed in monetary sanctions is at least \$276 billion. Hammons, B. (2020, May). Tip of the Iceberg: How much Criminal Justice Debt does the U.S. really have?. Fines and Fees Justice Center, pg. 5. https://finesandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg_Criminal_Justice_Debt_BH1.pdf.
- 20 Allen, N. (2018). Accomplishments and Findings for 2017 and Planning for 2018, Legal Financial Obligation Stakeholder Consortium – Minority and Justice Commission, page 1. <https://www.courts.wa.gov/subsite/mjc/docs/2018/LFO%20Stakeholder%20Consortium%20Progress%20Report.pdf>. Here, Accounts Receivable codes are considered distinct fines and fees assessed.
- 21 Cadigan, M. & Kirk G. (2020). On Thin Ice: Bureaucratic Processes of Monetary Sanctions and Job Insecurity. RSF: The Russell Sage Foundation Journal of the Social Sciences, 6(1): 113–31. Pgs. 119-120. DOI: 10.7758/RSF.2020.6.1.0.; Spencer-Suarez, K. and Martin, K. (2021). Navigating the Monetary Sanctions Maze: Understanding and Confusion Among Criminal Legal Debtors. Journal of Contemporary Criminal Justice, 37(1). 4–24. pgs. 5, 7. <https://doi.org/10.1177/1043986220971385>.
- 22 Ibid.
- 23 Washington Administrative Office of the Courts eService Center (2007). Type of court system in Washington state. https://aoc.custhelp.com/app/answers/detail/a_id/561/?type-of-court-system-in-washington-state;
- 24 Rafael, The High Price of Using Justice Fines and Fees,6. Research shows that the total revenue can reach up to nearly \$295 million in fines and forfeitures across all levels of government. Harris et al. (2016, September). Monetary Sanctions in the Criminal Justice System: a review of law and policy in California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas, and Washington. A Report to the Laura and John Arnold Foundation. Pg. 4. (Website broken).
- 25 Fitzgerald, T. W. and McAllister, J. (2018). Accomplishments and Findings for 2017 and Planning for 2018, Legal Financial Obligation Stakeholder Consortium – Minority and Justice Commission. Supreme Court Minority and Justice Commission. pg. 4. <https://www.courts.wa.gov/subsite/mjc/docs/2018/LFO%20Stakeholder%20Consortium%20Progress%20Report.pdf>.
- 26 Keenan, D. (2021). Chapter 15: Legal Financial Obligations from 2021: How Gender and Race Affect Justice Now Final Report. Gender and Justice Commission, Washington State Supreme Court, pg. 796. https://www.courts.wa.gov/subsite/gjc/documents/2021_Gender_Justice_Study_Report.pdf.
- 27 Revised Code of Washington 19.16.500 section 1b.(2021). <https://app.leg.wa.gov/rcw/default.aspx?cite=19.16.500>. 50% of total outstanding debt can be charged by collections agencies on total outstanding debt amounts less than \$100,000. For people with more than \$100,000 in total outstanding debt, 35% of the total can be charged by a collection agency.
- 28 Adamson, Debt Bondage, 307, 309, 319, 330-331.
- 29 Cadigan, M & Kirk G. (2020). On Thin Ice: Bureaucratic Processes of Monetary Sanctions and Job Insecurity. RSF: The Russell Sage Foundation Journal of the Social Sciences, 6(1): 113-31. DOI: 10.7758/RSF.2020.6.1.0.
- 30 Task Force 2.0 Race and Washington’s Criminal Justice System Research Working Group, “2021 Report to the Washington Supreme Court”, Fred T. Korematsu Center for Law and Equality, Appendix F, F-6, 2021 https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1116&context=korematsu_center.

Endnotes

- 31 Washington State Office of Public Defense (2019, May). 2018 Status Report on Public Defense in Washington State. https://www.opd.wa.gov/documents/00732-2019_StatusReport.pdf. Here, the use of a public defender is a proxy for someone with no ability to pay hire a lawyer for court representation and most likely limited financial means.
- 32 Ishisaka, N (2021, March 8) New Bill could provide help for Washington residents struggling with legal debt. The Seattle Times. <https://www.seattletimes.com/seattle-news/insurmountable-legal-debt-should-not-make-you-irredeemable/>.
- 33 Maria Rafael, “The High Price of Using Justice Fines and Fees to Fund Government in Washington State”, Vera Institute of Justice, pg. 5, June 2021, <https://www.vera.org/downloads/publications/the-high-price-of-using-justice-fines-and-fees-washington.pdf>.
- 34 Rafael, The High Price of Using Justice Fines and Fees, 5.
- 35 Harris, A. & Smith (2019, September 1). Multi State Study of Monetary Sanctions: Annual Deliverable to Arnold Ventures. Unpublished paper prepared for Arnold Ventures, New York.
- 36 Carrillo, R. (2020). Reflections: Challenging Monetary Sanctions in the Era of Racial Taxation. *UCLA Criminal Justice Law Review*, 4(1): 143-155.; Bhattacharya, J., Campos-Bui, S., Greene, B. (2021, July 29).Hear Us: California is Trailblazing the Path to Debt-Free Justice. Other States Should Follow., Next City. <https://nextcity.org/daily/entry/hear-us-california-trailblazing-path-debt-free-justice-other-states-follow>. Carrillo and Bhattacharya, Campos-Bui, Greene name criminal fees as a form of racialized wealth extraction.; Rafael M. (2021, June).The High Price of Using Justice Fines and Fees to Fund Government in Washington State Vera Institute of Justice, pg. 5.
- 37 Cadigan, M & Kirk G. (2020). On Thin Ice: Bureaucratic Processes of Monetary Sanctions and Job Insecurity. *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 6(1): 113–31. 114-116. DOI: 10.7758/RSF.2020.6.1.0.; Keenan, Chapter 15: Legal Financial Obligations, 803.
- 38 Adamson, Debt Bondage, 318.
- 39 Harris, A (2021, April 15). Daunte Wright and the grim financial incentive behind traffic stops. Vox. <https://www.vox.com/first-person/22384104/daunte-wright-police-shooting-black-lives-matter-traffic-stops>.
- 40 Harris, Daunte Wright and the grim financial incentive behind traffic stops.
- 41 Cadigan, M. &Smith T. (2020). “Are you Able-Bodied?” embodying accountability in the modern criminal justice system. *Journal of Contemporary Criminal Justice*, Vol. 37 (1), 25-44. <https://doi.org/10.1177/1043986220965034>; State v. Catling 193 Wn.2d 252 (2019). <https://casetext.com/case/state-v-catling-3>.
- 42 Cadigan and Smith, “Are you able-bodied?”.
- 43 Ibid, 35-36.
- 44 Wiehe, M., Davis, A., Davis, C., Gardner, M., & Gee, C. (2018, October). Who pays? A Distributional Analysis of the Tax Systems in All 50 States. ITEP. <https://itep.org/whopays/>.
- 45 ACLU of Washington. Questions and Answers about Legal Financial Obligations (LFOs). <https://www.aclu-wa.org/questions-and-answers-about-legal-financial-obligations-lfos>; Harris, A Pound of Flesh, 3.
- 46 Harris, A Pound of Flesh, 127-133.; Harris and Smith, Multi State Study, 83-88.
- 47 Harris, A Pound of Flesh, 52.
- 48 Friedman, B. (2020). Unveiling the necrocapitalist dimensions of the shadow carceral state: On pay-to-stay to recoup the cost of incarceration. *Journal of Contemporary Criminal Justice*, 37(1), 66–87. <https://doi.org/10.1177/1043986220965040>.; Harris, A Pound of Flesh.
- 49 Harris et al (2016, September). Monetary Sanctions in the Criminal Justice System: A review of law and policy in California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas, and Washington”, A report to the Laura and John Arnold Foundation.
- 50 Hammons, B. (2020, May). Tip of the Iceberg: How much Criminal Justice Debt does the U.S. really have? Fines and Fees Justice Center. https://finesandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg_Criminal_Justice_Debt_BH1.pdf.
- 51 Rafael, The High Price of Using Justice Fines and Fees, 13.
- 52 ACLU of Washington (2021, April 26). Terrell Marshall Law Group, ACLU of Washington file lawsuit against Pierce County for imposing excessive fines on people who cannot afford to pay court debt. News Release. <https://www.aclu-wa.org/news/terrell-marshall-law-group-aclu-washington-file-lawsuit-against-pierce-county-imposing>.
- 53 Rafael, The High Price of Using Justice Fines and Fees, 6.
- 54 Estimates provided by the Institute on Taxation and Economic Policy, October 2020.
- 55 Washington State Office of Financial Management (2021, February). [Multiple Agency Fiscal Note Summary for House Bill 1362](#). HB 1362 would have allowed regular levies to grow at an annual rate that is the lesser of the rate of inflation, as measured by the Consumer Price Index, plus the rate of population growth, or 3%. Total local property tax collections would have increased by \$53.3 million in FY2022; \$136.9 million in FY2023; \$233.7 million in FY2024; \$337.3 million in FY2025; \$447.9 million in FY2026; and \$565.8 million in FY2027.
- 56 Adamson, Debt Bondage, 312.; House Bill Report (2018). Final Bill Report E2SHB 1783. <http://lawfilesexternal.leg.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/House/1783-S2.E%20HBR%20FBR%2018.pdf?q=20210805011449>.
- 57 It is important to note that judicial discretion still results in racially biased sentencing and disparate fine amounts depending upon the jurisdiction and reliance on LFOs for revenue. Harris and Smith, Multi State Study of Monetary Sanctions.
- 58 Harris, A., Evans, H., & Beckett, K. (2011). Courtesy stigma and monetary sanctions. *American Sociological Review*, 76(2), 234–264. <https://doi.org/10.1177/0003122411400054>.
- 59 ACLU of Washington (2021, May 3). Victory: Thurston County Superior Court Rules Washington Driver’s License Suspension Law Unconstitutional for Individuals Who Cannot Afford to Pay Fines for Moving Violations. News Release. <https://www.aclu-wa.org/news/victory-thurston-county-superior-court-rules-washington-driver%E2%80%99s-license-suspension-law>.
- 60 ACLU of Washington (2021, June 1). Judge Orders Halt to Driver’s License Suspensions for Unpaid Tickets. News Release. <https://www.aclu-wa.org/news/judge-orders-halt-driver%E2%80%99s-license-suspensions-unpaid-tickets>.

Endnotes

- 61 Ibid.
- 62 ACLU of Washington, Terrell Marshall Law Group, ACLU of Washington file lawsuit against Pierce County for imposing excessive fines on people who cannot afford to pay court debt.
- 63 Ibid.
- 64 Office of the Public Defender (2020, September 24). California Becomes First State in the Nation to End Collection of Fees in the Criminal Legal System. San Francisco Public Defender. <https://sfpublicdefender.org/news/2020/09/california-becomes-the-first-state-in-the-nation-to-end-collection-of-fees-in-the-criminal-legal-system/>.
- 65 Office of the Public Defender, California Becomes First State in the Nation to End Collection of Fees in the Criminal Legal System.
- 66 California Senate Bill 177 (2021). California Legislature. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB177; Debt Free Justice California (2021). Got Criminal Administrative Fees?. <http://ebclc.org/wp-content/uploads/2020/10/FINAL-AB-177-Flyer-1-1.pdf>.

Authors:

Evan Walker,

Washington State Budget & Policy Center
Policy Analyst

Andy Nicholas,

Washington State Budget & Policy Center
Senior Fellow

Acknowledgements:

The Budget & Policy Center is grateful to the following people for giving their time, knowledge, and experience in their thoughtful feedback and perspective on this report, including: Nick Allen, Marcy Bowers, Prachi Dave, Deborah Espinosa, Kelly Olson, and Frank Thomas. The authors are also grateful to the staff at the Budget & Policy Center, the Center on Budget and Policy Priorities, and the Vera Institute for Justice who contributed to getting this report to its final state, including: Chris Mai, Maria Rafael, Cortney Sanders, Tammie Smith, David Hlebain, Jennifer Tran, Misha Werschkul, April Dickinson, and Melinda Young-Flynn.

The Washington State Budget & Policy Center is a research and policy organization that works to advance the economic well-being of all Washingtonians.

budgetandpolicy.org



@budget_policy



budgetandpolicy



WA Budget & Policy

